

NOTICE OF OPPORTUNITY TO COMMENT

CONSIDERATION OF THE REQUEST OF THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT THAT THE AIR RESOURCES BOARD SUBMIT THE DISTRICT'S FLEET RULES TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY FOR A SCOPE-OF-THE-WAIVER DETERMINATION UNDER SECTION 209(b) OF THE CLEAN AIR ACT

The Air Resources Board (ARB or Board) is considering whether to grant the request of the South Coast Air Quality Management District (SCAQMD or District) that the ARB submit the District's clean fuel fleet rules to the U.S. Environmental Protection Agency (U.S. EPA) for a determination that the rules are within the scope of previous waivers of preemption under section 209(b) of the federal Clean Air Act (CAA). The Executive Officer is accepting written comment through close of business on **November 15, 2004** on whether this request should be approved.

The SCAQMD Clean Fuel Fleet Rules. Health and Safety Code section 40447.5(a) authorizes the SCAQMD to require operators of public and commercial fleet vehicles, when adding or replacing vehicles, "to purchase vehicles which are capable of operating on methanol or other equivalently clean burning alternative fuel and to require that these vehicles be operated, to the maximum extent feasible, on the alternative fuel when operating in the south coast district." State law further provides that fleets of 15 or more vehicles under a single owner or lessee and operating substantially in the District may be subject to the District's fleet rules. Pursuant to this authority, the SCAQMD adopted seven clean fuel fleet rules on the dates indicated below after providing public notice, opportunity to comment, and a full public hearing on each of the following rules:

- 1186.1 – Less-Polluting Sweepers (8/18/00)
- 1191 – Clean On-Road Light- and Medium-Duty Public Fleet Vehicles (6/16/00)
- 1192 – Clean On-Road Transit Buses (6/16/00)
- 1193 – Clean On-Road Residential and Commercial Refuse Collection Vehicles (6/16/00; amended 6/7/02 and 6/6/03)
- 1194 – Commercial Airport Ground Access (8/18/00; amended 10/20/00)
- 1195 – Clean On-Road School Buses (4/20/01)
- 1196 – Clean On-Road Heavy-Duty Public Fleet Vehicles (10/20/00)

The District's clean fuel fleet rules generally require the affected public or private fleet operators to obtain alternative-fuel or low-emission vehicles rather than diesel-fuel vehicles. However, the rules provide for exceptions when such vehicles are not available, will not meet the intended purpose, or, for public school districts only, when the school district lacks sufficient funding to purchase them.

Litigation and the Supreme Court Decision. In August 2000, the Engine Manufacturers Association filed a lawsuit in federal District Court asserting that the District's clean fuel fleet rules were preempted by CAA section 209(a), which prohibits States and political subdivisions from adopting or enforcing any standard relating to the control of emissions from new motor vehicles. The District Court and the Ninth Circuit Court of Appeals held that the fleet rules were not preempted because they regulate only the purchase of vehicles that are otherwise certified to ARB standards for which waivers of preemption have been issued by the U.S. EPA pursuant to CAA section 209(b). However, on April 28, 2004, the U.S. Supreme Court vacated the lower court's judgment, concluding that the fleet rules do not escape preemption just because they are enforced by requirements imposed on vehicle purchasers rather than vehicle manufacturers and remanded the case for further proceedings consistent with the Court's opinion.

The California Waiver Mechanism. The Clean Air Act in section 209(a) states a general principle of preemption of state and local emission standards for new motor vehicles. However, CAA section 209(b) carves out a special exception for California. Section 209(b) directs the Administrator to waive federal preemption for new motor vehicle emission standards adopted and enforced by California if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. The waiver may be denied only if the Administrator finds: (1) that the protectiveness determination of the State is arbitrary and capricious, (2) that California does not need separate State standards to meet compelling and extraordinary conditions, or (3) that the State standards and accompanying enforcement procedures are not consistent with CAA section 202(a). The U.S. EPA generally treats California's standards and accompanying test procedures as inconsistent with CAA section 202(a) only if there is inadequate lead time to permit the development of technology to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame, or if the federal and California test procedures impose inconsistent certification requirements so as to make manufacturers unable to meet both sets of requirements with the same vehicle.

The U.S. EPA has issued a number of individual waivers of preemption to California applicable to the ARB's exhaust and evaporative emissions standards for passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and vehicle engines. In addition, it is the U.S. EPA's practice to consider amendments to previously waived standards or enforcement procedures as being within the scope of a previous waiver if those amendments do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable federal standards, do not affect the consistency of California's requirement with CAA section 202(a), and raise no new issues affecting the U.S. EPA's previous waiver determination. The ARB is seeking specific comment on whether the SCAQMD clean fuel fleet rules fall within these guidelines for a scope of the waiver determination.

Other Considerations. The ARB is aware that several stakeholders view the SCAQMD waiver request and clean fuel fleet rules as a substantive change to state policy and state regulatory practices since some of the District rules expressly mandate the use of alternative fuels rather than establishing quantitative, performance-based requirements for vehicles subject to the regulations. ARB is seeking specific comment on this issue and its relevance to the State's action on the District's waiver request.

Contact Information. Written comments may be submitted by postal mail, electronic mail, or facsimile as follows:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Electronic mail is to be sent to: scfleets@listserv.arb.ca.gov

Facsimile submissions are to be transmitted to: (916) 322-3928

In order to be considered by the Executive Officer, comments must be directed to the ARB in one of the three forms described above and received by the ARB by **5:00 p.m., November 15, 2004.**

CALIFORNIA AIR RESOURCES BOARD


Catherine Witherspoon
Executive Officer

Date: October 1, 2004